

## THE LAW

• Aaron Krauss



### Saving Money by Saving Money

OK, I admit it. I just got my first car insurance bill with a teenager on the policy. While I knew that teenagers added risk (and premiums), I didn't realize how much. So, aside from telling them to grow up (and to do it quickly), what can you do?

Actually, there is something you can do. You can take the limited tort option. If you give up your right to sue for pain and suffering for minor accidents, you get lower rates. But why?

Two reasons really. The first is that choosing the limited tort option limits the potential damages. The second is that, once the damages are limited, the likelihood that someone is going to seek whatever damages are left is also limited. Jokes notwithstanding, most lawyers (and even most parties) aren't complete idiots. If they know that the amount they can recover is small, they often decide it isn't worth their while. Not only does this limit payouts (obviously, the payout is zero if no one seeks damages), it limits the time and money that must be spent defending claims.

So what does this have to do with your life? You can't take a limited tort option for commercial risks. Or can you?

Actually, you can, you just can't do it in an insurance policy. You have to limit your commercial risks in the underlying contract.

I'm not talking about disclaiming warranties. While that sometimes works, you have to use bold print, and customers sometimes balk. Try telling your biggest customers that the goods you are selling them don't come with any warranties and see what they say.

I'm also not talking about shifting liability and asking someone else to indemnify you. Again, people balk at indemnification, and you still have to worry that whoever is indemnifying you won't step up if there is a problem, or won't have enough money to solve whatever problem arises. I'm talking about limiting your liability.

You can limit your liability in two different ways. You can limit the types of things you will be liable for. The most common limit is on lost profits or consequential damages. This can be done either by disclaiming those types of liabilities, or by limiting your liability to the repair or replacement of whatever it is you are selling.

The second is a limit on the amount of money you can be liable for, either in absolute dollars like the \$250 limit on liability every alarm company puts into its monitoring contract, or in relation to the contract amount, like the clause architects use to limit their liability

to the amount of the contract.

Personally, I like the second way better. You don't have to fight over what is a "direct" or a "consequential" damage. Besides, "direct" damages can still be huge. Just ask a plaintiffs' lawyer in a case in which the plaintiff was rendered a quadriplegic as a result of an accident. More importantly, nothing quantifies a risk like an explicit quantification of the risk. While you can't get away with limiting your risk to nothing (customers won't agree to it, and courts won't enforce it), courts generally uphold reasonable

limits on what can be recovered.

If everyone knows that they can't make a federal case out of a claim, the odds are that they won't. Indeed, they might not make any case out of it. Not only does that save you and your insurer money, it saves you and your insurer the cost of defending claims. That drives down premiums. If you save money, we can all save money.

**AARON KRAUSS** is a trial lawyer at Cozen O'Connor, concentrating on commercial cases. He can be reached at [riskletters@lrp.com](mailto:riskletters@lrp.com).

Our brokers want flexibility.  
Our clients want strength.



*We deliver.*



[www.awac.com](http://www.awac.com)

From solid financial ratings, to superior customer service, to a strong global presence. Allied World Assurance Company is uniquely positioned to deliver the insurance and reinsurance solutions you need, when you need them.

BERMUDA | BOSTON | CHICAGO | DUBLIN | LONDON | NEW YORK | SAN FRANCISCO

Insurance coverage is underwritten by member companies of the Allied World Assurance Group. Coverage is subject to underwriting. Member companies may not be licensed in your state or jurisdiction. To find out if coverage is available, please contact your insurance broker.